

Filed 10/21/20 by Clerk of Supreme Court

**IN THE SUPREME COURT
STATE OF NORTH DAKOTA**

2020 ND 220

Garron Gonzalez,

Petitioner and Appellant

v.

State of North Dakota,

Respondent and Appellee

No. 20200079

Appeal from the District Court of Burleigh County, South Central Judicial District, the Honorable James S. Hill, Judge.

AFFIRMED.

Per Curiam.

Kiara C. Kraus-Parr, Grand Forks, ND, for petitioner and appellant.

Julie A. Lawyer, State's Attorney, Bismarck, ND, for respondent and appellee.

Gonzalez v. State
No. 20200079

Per Curiam.

[¶1] Garron Gonzalez appeals from an order denying his application for post-conviction relief. Gonzalez asserts the district court failed to determine whether newly discovered DNA evidence would have been material to his decision to enter a plea of guilty as directed by this Court’s prior decision. *Gonzalez v. State*, 2019 ND 47, ¶ 19, 923 N.W.2d 143. In this Court’s prior decision, we reversed and remanded the case to the district court concluding the court erred by summarily denying Gonzalez’s application. Specifically, we noted the court had not addressed Gonzalez’s argument that there was newly discovered evidence that would have been material to his decision to plead guilty rather than proceed to trial. The court had not made a factual finding on whether the DNA evidence was newly discovered or, if newly discovered, whether the DNA evidence would have been material to Gonzalez’s decision to enter a plea of guilty.

[¶2] On remand, the court found Gonzalez had not demonstrated the evidence was “newly discovered” noting that Gonzalez was aware at the time he decided to change his plea that evidence potentially containing DNA was collected at the alleged crime scene and sent to the State Lab for analysis. The court also found Gonzalez knew evidence had been gathered at the scene and sent to the State Lab for testing, and those facts were taken into account by Gonzalez when considering a plea deal. Based on those findings, the court found Gonzalez had failed to demonstrate the evidence was newly discovered. Having found the evidence was not newly discovered, it was unnecessary to make factual findings on whether the DNA evidence was material to Gonzalez’s decision to enter a plea of guilty. We conclude the decision of the district court is supported by findings meeting the required standard of proof

and summarily affirm the denial of application for post-conviction relief pursuant to N.D.R.App.P. 35.1(a)(2).

[¶]3] Jon J. Jensen, C.J.
Daniel J. Crothers
Gerald W. VandeWalle
Jerod E. Tufte
Lisa Fair McEvers